

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

SHIRLEY BROWN

PLAINTIFF

v.

CIVIL ACTION NO.: 3:24-cv-556-TSL-MTP

THE CITY OF JACKSON, MISSISSIPPI, *et al.*

DEFENDANTS

ORDER AND NOTICE TO PLAINTIFF

THIS MATTER is before the Court *sua sponte* for case management purposes for Plaintiff Shirley Brown’s failure to prosecute this action against Defendant Alpha Phi Alpha Fraternity, Delta Phi Chapter (“the Fraternity”). Plaintiff filed her Complaint [1] on September 17, 2024, against numerous Defendants, including the Fraternity. On January 2, 2025, Plaintiff filed an Amended Complaint [15] against many of the same Defendants, including the Fraternity, but she also added two new Defendants and removed others. To date, however, Plaintiff has not filed proof of service for the Fraternity, and it has not answered or otherwise appeared in this matter.

“If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). Notably, “the [90]-day period provided by Rule 4(m) is not restarted by the filing of an amended complaint except as to those defendants *newly added* in the amended complaint.”¹ *Fox v. United States*, 2012 WL 639915, at *1 (S.D. Miss. Feb. 27, 2012) (emphasis added).

¹ “Filing an amended complaint does not toll the Rule 4(m) service period and thereby provide an additional 90 days for service. However, *adding* a new party through an amended complaint initiates a new timetable for service upon the *added* defendant.” *Callier v. Jascott Enters., LLC*,

In this case, the Fraternity is not a defendant “newly added” in the Amended Complaint [15], so the ninety (90)-day deadline for serving the Fraternity has expired.

IT IS, THEREFORE, ORDERED that if service of process is not served on Defendant Alpha Phi Alpha Fraternity, Delta Phi Chapter **and** proof thereof filed with the Court by January 21, 2025, or the Court does not extend the time for service based upon a showing of good cause, this Defendant may be dismissed without prejudice and without further notice. *See* Fed. R. Civ. P. 4(m).

SO ORDERED, this the 6th day of January, 2025.

s/Michael T. Parker

United States Magistrate Judge

2023 WL 7450433, at *3 (W.D. Tex. Oct. 3, 2023) (*quoting* 4B Wright & Miller, Federal Practice and Procedure § 1137 (4th ed.) (emphasis added)).